

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

KELLY MILLIGAN,
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

vs.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INC., BANK OF AMERICA CORP.,
and JOHN/JANE DOE 1, THE SENIOR VICE
PRESIDENT–HUMAN RESOURCES
GLOBAL BANKING AND GLOBAL
WEALTH AND INVESTMENT
MANAGEMENT ADMINISTRATION AT
BANK OF AMERICA CORP.,

Defendants.

Case No. 3:24-cv-00440-KDB-DCK

Judge Kenneth D. Bell
Magistrate Judge David Keesler

CLASS ACTION

JOINT MOTION TO STAY

Plaintiff Kelly Milligan (“Plaintiff”) and Defendants Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”) and Bank of America Corp. (“Bank of America”) (together, “Defendants”), by and through their attorneys, respectfully move the Court to stay this case except for Defendants’ pending motion for summary judgment (ECF No. 41), until the Court issues its ruling on such motion. In support of this joint motion, Plaintiff and Defendants (collectively, the “Parties”) state the following:

1. Plaintiff filed this proposed class action on April 30, 2024.
2. Defendants moved for summary judgment (ECF Nos. 41-42) on September 30, 2024. After conferring, the parties proposed a stipulated schedule for certain additional discovery and the remaining briefing on Defendants’ motion (ECF No. 50), which the Court entered on

October 21, 2024 (ECF No. 51). Plaintiff responded to the summary judgment motion (ECF Nos. 53-54) on December 6, 2024. Defendants replied (ECF Nos. 58-60) on December 30, 2024.

3. On January 6, 2025—the deadline to amend the pleadings under the August 13, 2024 Pretrial Order and Case Management Plan (ECF No. 36)—Plaintiff filed a motion for leave to amend the complaint (ECF No. 62). Defendants’ current response deadline is January 21, 2025. *Id.* In seeking leave, Plaintiff stated that “none of these changes [in the proposed amended complaint] impacts Defendants’ pending motion for summary judgment.” (ECF No. 62-3). Defendants do not consent to the proposed amendment and intend to preserve all rights and arguments in opposition to Plaintiff’s motion. However, Defendants agree it is unnecessary to brief and resolve that motion at this time, because if the Court grants Defendants’ pending summary judgment motion then any efforts undertaken by the parties and/or this Court in resolving Plaintiff’s motion for leave would have been unnecessary and wasteful.

4. To conserve party and judicial resources, the Parties wish to stay all proceedings except for Defendants’ pending motion for summary judgment. If granted, this motion would end the lawsuit (pending any appeal).

5. The Parties have the following upcoming deadlines in this case: (a) Defendants’ response to Plaintiff’s motion for leave to amend is due January 21, 2025; (b) Plaintiff’s expert report is due February 3, 2025; (c) Defendants’ expert report is due March 3, 2025; (d) the discovery deadline is April 4, 2025; (e) a Mediation Report is due by April 4, 2025; and (f) dispositive motions must be filed by May 5, 2025. The trial term is October 6, 2025.

6. Other tasks remain as well. The parties need to depose various fact and expert witnesses, including Plaintiff, Defendants’ corporate witness(es), and any experts. Plaintiff intends

to move for class certification. The Parties may also need to file discovery motions related to document productions and deposition topics.

7. If Defendants' motion for summary judgment is granted after the parties have undertaken the above efforts, then none of those items will have been necessary, and the Parties and possibly the Court will have wasted resources and incurred unnecessary costs. The Parties prefer that the Court stay the case except for the summary judgment motion, and if that motion is denied, then the Court can reset the remaining deadlines and the case can resume.

8. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

9. This Motion is filed for good cause and not for delay or any other improper purpose.

10. Pursuant to Local Civil Rule 7.1(b), the parties' counsel conferred regarding the relief sought in this Motion and submit the Motion as a joint filing.

WHEREFORE, the Parties respectfully move this Court for a stay of all proceedings except for Defendants' pending motion for summary judgment (ECF No. 41), until such time as this Court issues its ruling on such motion.

Dated: January 14, 2025

Respectfully submitted,

By: /s/ Matthew A. Russell

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Respectfully submitted,

/s/ John D. Hurst

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CERTIFICATE OF SERVICE

I, John D. Hurst, an attorney, hereby certify that on January 14, 2025, I caused a copy of the foregoing to be filed through the Court's CM/ECF Electronic Filing System, which will transmit notice of such filing to all counsel of record.

/s/ John D. Hurst